IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA BRYSON CITY DIVISION

CRIMINAL NO. 2:06CR30

UNITED STATES OF AMERICA)	
Vs.)))	ORDER
DANIAL A. FLOWERS)))	

THIS MATTER is before the Court *sua sponte* to request Defendant Danial A. Flowers respond to the portion of the Government's Response Brief which states,

in the interests of judicial efficiency, the United States consents to the dismissal of this charge against Defendant, as the fines imposed against Defendant for the other two charges suffice to protect the interests of the United States. Therefore, the United States does not object to this Court's vacating Defendant's conviction under [N.C. Gen. Stat.] § 14-197 and dismissing that charge against him.

Government's Response Brief, filed February 5, 2007, at 8.

Before entering any dismissal, the Court will afford the Defendant the opportunity to advise the Court whether or not he deems it in his best interest to concede to the dismissal of his conviction for "using profane or indecent language on public highways," codified at N.C.G.S. § 14-197. If

the Defendant consents to such action, the Court will vacate Defendant's conviction under § 14-197 but will not consider his or the *amicus curiae*'s facial challenge to the constitutionality of that statute. However, the Court will consider the Defendant's appeal of his remaining two convictions. If no response is filed, the Court will proceed under the assumption that Defendant does not concede to the dismissal of his conviction under § 14-197.

IT IS, THEREFORE, ORDERED that Defendant Flowers respond to the Government's offer to dismiss his conviction for using profane or indecent language on public highways under N.C. Gen. Stat. § 14-197 as directed herein on or before MARCH 5, 2007.

Signed: February 13, 2007

Lacy H. Thornburg United States District Judge